

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
)
BERNARD von NOTHAUS,)
)
 Defendant.)
_____)

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE RICHARD L. VOORHEES
UNITED STATES DISTRICT COURT JUDGE
JULY 19, 2010

APPEARANCES:

On Behalf of the Government:

MARK ODULIO
United States Attorney's Office
227 West Trade Street, Suite 1700
Charlotte, North Carolina

On Behalf of the Defendant:

AARON E. MICHEL
Attorney at Law
3736 Surry Ridge Court
Charlotte, North Carolina

Cheryl A. Nuccio, RMR-CRR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

THE COURT: The magistrate judge ordered the defendant's bond revoked. Defendant appealed. It's now before the court to determine whether he should be detained pending the trial or whether he should be allowed bond. In other words, whether the magistrate judge's order should be upheld or not.

Either side disagree with that proposition?

MR. ODULIO: That's correct, Your Honor.

MR. MICHEL: We agree, Your Honor.

THE COURT: Would you offer -- you've made the motion, Mr. Michel. Would you be offering any evidence?

MR. MICHEL: Your Honor, just what we've attached to the motion.

THE COURT: Right, I have seen everything that's been filed.

MR. MICHEL: And would just proffer that his youngest son -- his youngest son Xtra is here today to show the family support. He flew in from California. I've been in contact with Mr. von NotHaus's mother in Florida. She's very supportive. She was supportive in buying the plane ticket, providing the resources to get here to answer up in magistrate court, and continues to be supportive. His family is very supportive of him. If there's some concern about ties to the community as suggested by Judge Cayer's order in terms of his

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1 not being able to come here when required, he has the
2 resources through his family to be here when called upon to be
3 here.

4 That violation report created a substantial, you
5 know, burden, spending over a thousand dollars to come here to
6 answer to what appeared to me as well as Mr. von NotHaus to be
7 nothing new. And I don't mean to be dismissive of -- if
8 somebody's got a concern, then I think it should be raised.
9 It should be discussed and addressed. But the violation
10 report saying there's a Hawaii Dala website out there, that's
11 nothing new.

12 I don't want to waste the court's time rehashing
13 what we've already said, but he did arrange to be here for
14 that hearing to answer up to the court, to answer questions on
15 that. He did answer up. He waived his right to remain
16 silent, to take the stand, to answer the questions put to him
17 about that. And he's very earnest and concerned about being
18 forthright with the court.

19 If the court had last year asked him to remove those
20 two websites, the Liberty Dollar website and the Hawaii Dala
21 website, both of which were in existence before the legal
22 proceedings began in this case and which the government knew
23 of. And while I wasn't in the hearings last year, it's my
24 understanding that this court addressed the issue of at least
25 the Liberty Dollar website in last December's conference

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1 because Mr. von NotHaus remembers that the court said you
2 wanted some things taken out of that Liberty Dollar website
3 and that's what they did.

4 I have reviewed the correspondence between
5 Mr. von NotHaus and his former counsel Deke Falls and Deke did
6 advise him what he needed to do and Mr. von NotHaus did comply
7 with that. And the tenor of that exchange was a desire by
8 Mr. von NotHaus to stay out of trouble and to abide by the
9 court's orders.

10 And the Hawaii Dala website is inactive. There's no
11 orders taken. He's not filled any orders. He's not filling
12 any orders on anything. He's out of that until this case is
13 resolved. And I hope and believe that it will be resolved
14 positively towards him and that the truth will be known that
15 these coins aren't counterfeit. They're a competitive private
16 barter currency that is legal under the Constitution. But he
17 understands that he needs to stand pat until that's resolved
18 and he's desirous of doing that and will comply with whatever
19 this court orders him to do to assure the court that there's
20 not going to be any problems.

21 I know that occasions there will be something in the
22 news, some part of the country about some community who likes
23 the Liberty Dollar and the media covers it. And the bottom
24 line -- it could go either way. It could be damning of
25 Liberty Dollar; it could be positive of the Liberty Dollar.

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1 And they've been positive that people see a value to having
2 something other than the U.S. currency to use.

3 But -- and the point I'm trying to make is that he's
4 never been cited in or been used in or participated in any of
5 that. He's remained out of sight except for those websites
6 which have been in place well before I got involved and
7 everything on there was approved by Deke Falls. If the court
8 wants that changed, he will make those changes.

9 THE COURT: Well, I take it including taking the
10 websites down all together.

11 MR. MICHEL: Yes, Your Honor.

12 THE COURT: And there's never been a Tea Party
13 Dollar website as such; is that correct?

14 MR. MICHEL: He party? Oh, Tea Party website. Not
15 to my knowledge, Your Honor.

16 THE COURT: A Tea Party Dollar website.

17 We're talking about two websites and there's never
18 been a Tea Party Dollar website as such; is that correct?

19 MR. MICHEL: Not by Mr. von NotHaus and he's not
20 involved with that. Like I said, he wants to stay out of
21 trouble.

22 THE COURT: But he -- there's chat that he is
23 receiving royalty checks from something. Now, let's clarify
24 what that is. It's from his copyright on the design, but what
25 unit of merchandise are we talking about?

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1 MR. MICHEL: It's -- from my understanding, it's for
2 his design work of the Liberty head that did appear, I think,
3 on the Liberty Dollar; is that correct?

4 (Counsel and defendant conferred.)

5 MR. MICHEL: And he informs me that there's no --
6 currently no royalties that -- what checks he did get he gave
7 to the probation office -- gave copies to the probation
8 office. But there's no more checks coming in. Apparently
9 that income is gone as far as he can tell.

10 THE COURT: I mean, obviously, if there were royalty
11 checks coming in, that would imply that Liberty Dollars were
12 being sold; isn't that right?

13 MR. MICHEL: Well, I believe Liberty Dollars are
14 being used, but he's not involved with that.

15 THE COURT: I'm talking about any new sales, current
16 sales.

17 MR. MICHEL: He did receive the design work checks
18 from Silver Liberty Marketing for commemorative works. And if
19 the court wishes to order him not to do any design work
20 whatsoever for anything, then he'll comply with that.

21 But if you look at the court's order, not to
22 circulate any currency or coin not produced by the mint. He's
23 not circulated or produced or minted anything. That design
24 work that he did -- what was the last design work you did?

25 (Counsel and defendant conferred.)

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1 MR. MICHEL: He did design work last year and none
2 this year, and that's apparently why the checks have stopped.
3 Unless the government's having conversations with that guy and
4 taking issue with the Tea Party medallions. Which I have to
5 say, I can understand why the court would want him not to be
6 involved with things that are medallions or commemorative work
7 that from my view clearly isn't counterfeit, clearly isn't
8 illegal, but because he's charged with something in that neck
9 of the woods, then he's ordered to stay away from it. I
10 understand that part of it.

11 And -- so what I'm trying to say is I don't think
12 they can go after whoever is dealing with the Tea Party
13 medallions because there's nothing illegal about them. And
14 the artwork he did for this company was done last year and
15 he's received some checks from last year and some checks I
16 think this year, but from what I understand, the checks have
17 stopped because apparently there's nothing there for him.

18 If the court wants to order him to take down the two
19 websites, not be involved with any websites and to not provide
20 any design services, then he's willing to do that, Your Honor,
21 because he does intend to not be a problem for the court
22 pretrial.

23 THE COURT: All right.

24 MR. MICHEL: And I would just point out, he does
25 have very close ties to his family. On the way up here his

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1 son rode with me and he was telling me about how each year he
2 would spend two months with his two boys traveling to see
3 every state in this country. And when they finished doing
4 that, they started spending time in South America doing some
5 travels for two months in South America. One time to Spain
6 where their mother is from. But he has very strong ties to
7 the community and he does have those relationships that will
8 get him here whenever the court needs for him to be here.

9 THE COURT: All right. Thank you. We'll hear from
10 the government.

11 MR. ODULIO: Your Honor, the government would
12 incorporate the argument both in the underlying detention
13 hearing as well as the motion it filed prior to the hearing,
14 Your Honor. We would note that the magistrate court
15 considered the defendant's request to take down the websites,
16 but the linchpin in the magistrate court's judgment, Your
17 Honor, and decision was his view that no matter what order or
18 clarification was set by the court, that in the view of the
19 lower court, that there was no combination or conditions of
20 release that the defendant would abide by.

21 And I think, Your Honor, that's really highlighted
22 by the arguments of counsel. For example, the government's
23 view is that the release conditions in this case have been
24 clear. To the extent they needed clarification, there had
25 been clarification provided, Your Honor, and that

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1 clarification has been unambiguous: That the defendant be
2 prohibited from minting or producing any coinage or currency
3 and from circulating any coinage or currency that has not been
4 produced by the United States Mint. As reflected in, I think,
5 the defendant's testimony, he acknowledged that he had a --
6 was receiving royalty. He indicated that a part of his design
7 was being used in connection with the continued sale of some
8 of these items and Silver Liberty Marketing was the conduit
9 for that. And the lower court, Your Honor, made findings of
10 that.

11 You may recall from the testimony below, the
12 defendant, Your Honor, acknowledged that on the Hawaii Dala
13 website itself, there was no place that an online order could
14 be made, but that it was -- there was no where for a consumer
15 to discern on the website that an order could not be placed.
16 And in fact, Your Honor, on the website there's contact
17 information for an order to be placed to include the name,
18 P.O. Box, and a phone number.

19 Prior to hearing, Your Honor, I directed my agent
20 here, Cody Muse, to do a search of the P.O. Box listed on the
21 Hawaii Dala website and what we got back is it comes back to
22 an individual named Liberty Dollar of Indianapolis, Allen
23 McConnell, and that's P.O. Box 2105, Indianapolis, Indiana
24 46206, which, Your Honor, just demonstrates that this Hawaii
25 Dala is not independent of the Liberty Dollar that is being

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1 distributed by this individual Allen McConnell who is somehow
2 associated with Liberty Dollar of Indianapolis.

3 In addition, Your Honor, counsel indicated that
4 there was no more -- or there was no Tea Party Dollar website.
5 However, again, this morning we were able to print off from
6 the Liberty Dollar website a page that deals with the Tea
7 Party Dollar.

8 And, Your Honor, may I approach?

9 THE COURT: Yes.

10 MR. ODULIO: And again, the agent printed this off
11 this morning. We'd highlight the last page of the document,
12 Your Honor, which says, "Now, could you imagine if those
13 fumbling bunch of idiots, a/k/a FBI, raided the Liberty Dollar
14 just in time to confiscate the politically expressive Tea
15 Party Dollar like they did the Ron Paul Dollar. Obviously, it
16 is impossible to mistaken the Tea dollar for a counterfeit
17 U.S. dollar that is solidly protected by the First Amendment."

18 In addition, Your Honor, although this was not a
19 subject at the detention hearing below, in preparation for the
20 hearing, again, I had the agent conduct a search and he found
21 the website related to Mr. von NotHaus called Free Marijuana
22 Church of Honolulu. May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. ODULIO: And again, Your Honor, we highlight
25 this because we want to, I think, Your Honor, amplify the

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1 magistrate court's determination that no matter what
2 conditions the magistrate court sets, that this defendant will
3 parse it and will not abide by it. As the court is aware, the
4 defendant is prohibited -- or is required to not commit any
5 other crime while he's on release. There is --

6 THE COURT: Where do you see that this is associated
7 with Mr. von NotHaus apart from the fact that the search used
8 his name?

9 MR. ODULIO: Your Honor, we -- the agent conducted a
10 domain search of who the registered owner of the website is
11 and that came back to Mr. von NotHaus.

12 May I approach, Your Honor?

13 THE COURT: Right.

14 (The document was tendered to the court.)

15 MR. ODULIO: Your Honor, I believe if you will read
16 through it, there is some reference to the Liberty Dollar
17 activities within the pages. We'd just highlight, Your Honor,
18 on the sixth page of this document it says, "For that reason I
19 have smoked one toké of marijuana every Sunday for the past 12
20 years. You might say I observe my special Sunday service
21 religiously every Sunday."

22 THE COURT: Where are you reading?

23 MR. ODULIO: From the website Free Marijuana Church,
24 Your Honor, I believe it's the sixth page, and it's the fourth
25 paragraph that starts with "For that reason."

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1 THE COURT: So is this verbiage attributed to
2 Mr. von NotHaus?

3 MR. ODULIO: I believe so, yes, sir.

4 THE COURT: Well, you have it in front of you. You
5 don't have to believe it. You can actually point it out, can
6 you not?

7 MR. ODULIO: Yes, sir. Just a moment, Your Honor,
8 I'm sorry.

9 I have it here, Your Honor. It's the eighth page,
10 Your Honor.

11 THE COURT: Starting what?

12 MR. ODULIO: It says -- there is a -- it's -- my
13 page, Your Honor, says, "Thank you for reading my story. God
14 loves us all. Bernard NotHaus. High priest of Honolulu."

15 THE COURT: All right. I have page -- the eighth
16 page I have starts with "dwells within all of us." Do you see
17 that?

18 MR. ODULIO: Yes, sir.

19 THE COURT: So where are you reading where it has
20 defendant's name?

21 MR. ODULIO: It says "dwells within all of us."
22 Then the next paragraph, Your Honor, says "Thank you for
23 reading my story."

24 THE COURT: Oh, I see. All right.

25 MR. ODULIO: "God loves us all." And then it's

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1 Bernard von NotHaus.

2 THE COURT: Right. Okay.

3 MR. ODULIO: Again, Your Honor, we would just close
4 with that. We're not suggesting that this conduct alone would
5 be a sole basis for violation of the defendant's condition.
6 We point to the entire record here from the initial order, the
7 conditions of release, to the clarification order sought and
8 obtained by the defendant in October, all the way through the
9 record developed at the hearing below; and that is, Your
10 Honor, whatever conditions of release are set by this court,
11 the defendant will parse and will, despite the evidence, posit
12 that he's not in violation. And based on that there are no
13 conditions or combination of conditions. We'd ask the court
14 to adopt the findings of fact and the conclusions of law by
15 Magistrate Judge Cayer.

16 THE COURT: All right. Well, this business with the
17 Free Marijuana Church of Honolulu article, as far as I can
18 tell, doesn't show any involvement on its own four corners
19 with currency or any arguable form of it.

20 MR. ODULIO: Yes, sir.

21 THE COURT: It does show that he's capable of
22 getting onto websites and saying things, but that doesn't -- I
23 don't believe that's the proper focus of this hearing.

24 MR. ODULIO: Your Honor, we just bring it up because
25 I believe it's part of the standard conditions of release that

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1 he not violate any law or any additional law and we just
2 wanted to provide that to the court for the court's attention.
3 Your Honor, the focus on the inquiry all along has been the
4 currency, these issues, and we'd submit on that. I just
5 wanted to raise that and bring it to your attention.

6 THE COURT: I understand. And of course, it would
7 seem at minimum perplexing that a defendant with a pending
8 case would be associating himself with verbiage that appears
9 to argue for, promote or otherwise involve the defendant with
10 a movement, one aspect of which involves a substance which is
11 possession which is banned by federal law, if not the law of
12 several states.

13 But in any event, do you want to add anything,
14 Mr. Michel?

15 MR. MICHEL: Just that this website was created back
16 in 2008 and last updated, according to this, December 2009.
17 My client wishes to assure the court that he's not used any
18 marijuana while on pretrial supervision and the report of the
19 probation officer was that in all other respects he has
20 complied with the terms of probation. He's done everything
21 legal. He's not been doing marijuana, although it is legal by
22 doctor's prescription in Hawaii. But as the report says, he's
23 been compliant. The only question presented by the probation
24 officer was his discovery of this website, which is new to him
25 but not new to everybody else in this case.

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1 Thank you, Your Honor.

2 THE COURT: All right. Well, the court has, of
3 course, respect for its magistrate judges and their views of
4 these things, but the court's obligation here is to view the
5 matter de novo, which the court does. The court finds that
6 defendant did violate the terms of his supervised release but
7 will hold those violations in abeyance and reinstate his bond
8 on the same terms it's had up until now -- or up until it was
9 recently revoked.

10 Now, do you understand, Mr. von NotHaus, that any
11 violation of your bond conditions that have existed up until
12 the hearing before Judge Cayer are going to be in effect from
13 now on?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that any violation of those terms
16 and conditions will be undoubtedly met with concern by the
17 probation officer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the court will add a condition that
20 you not -- first of all, that you take down both the Liberty
21 Dollar and the Hawaii Dala websites.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And that you not involve yourself with
24 any other website or enterprise which either appears or --
25 appears to promote any coin, currency, medallions,

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1 commemoratives or any other form of conceivable exchange. Is
2 that broad enough? Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And the reason you were found in
5 violation is because you have continued to promote these
6 websites by posting, as I understand your materials, monthly
7 newsletters which, whatever they may say, necessarily promote
8 the Liberty Dollar or the Hawaii Dala as the case may be. The
9 court is not concerned with the nomenclature that you use to
10 describe these vehicles, but you must think that some court at
11 least is lacking in intelligence when you make a fuss over how
12 there's no denomination shown on one of the coins and then you
13 come right out on your website and talk about it being a \$50
14 piece. That certainly suggests a value that you say should be
15 ascribed to it even if you haven't put it on the merchandise
16 itself. I just cite that because violation is written all
17 over these activities that have been put in evidence before
18 the court.

19 THE DEFENDANT: Sir...

20 THE COURT: And it's obvious that you've been
21 skirting or attempting to skirt the court's order. Well, I
22 just want you to be aware that the court is concerned with
23 direct obvious violations and also indiscreet, or otherwise,
24 efforts to skirt the violations or just barely avoid being in
25 violation. The court is concerned about your ability to abide

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1 by the law and stay out of custody while you're preparing your
2 case so that you can get a fair trial.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And that if you continue the kind of
5 behavior you've been engaging in, that you'll have to defend
6 yourself from the warm confines of the custody of the marshal.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So the order of bond is the same except
10 that -- for the additional term that I mentioned.

11 Any question from defense counsel as to what the
12 terms are?

13 MR. MICHEL: No, Your Honor.

14 THE COURT: Yes, sir.

15 MR. ODULIO: One request, Your Honor. The officer
16 informs me and I don't believe there is currently a drug
17 testing regimen in connection with the conditions of release
18 and we'd request that be added.

19 THE COURT: So ordered.

20 MR. ODULIO: Nothing further, Your Honor.

21 THE COURT: That would be the usual regimen of
22 periodic or random testing according to the standard
23 conditions in effect in this district.

24 MR. ODULIO: Yes, sir. Thank you.

25 MR. MICHEL: Thank you, Your Honor.

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1 (End of proceedings at 2:50 p.m.)

2 *****

3 UNITED STATES DISTRICT COURT

4 WESTERN DISTRICT OF NORTH CAROLINA

5 CERTIFICATE OF REPORTER

6
7
8 I certify that the foregoing transcript is a true
9 and correct transcript from the record of proceedings in the
10 above-entitled matter.

11
12 Dated this 31st day of January 2011.

13
14
15 s/Cheryl A. Nuccio
16 Cheryl A. Nuccio, RMR-CRR
Official Court Reporter
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